

Line of Duty Investigating Officer's Legal Brief

1. Introduction. Congratulations for your selection as a Line of Duty (LOD) Investigating Officer. The type of investigation you will conduct will be a “formal” LOD. The person who appointed you as an Investigating Officer should be a Battalion level commander or higher. You must be senior in grade to the person you are investigating (unless the appointing authority determines in writing that it is impracticable because of military exigencies). You have 75 days from the date of the incident to complete your investigation. This is an important duty that directly impacts a soldier's right to current, as well as future, medical benefits, as well as survivor benefits for family members of a deceased soldier. Correspondingly, your investigation also impacts the government's duty to provide benefits. The primary purpose of your investigation is to determine whether the soldier, at the time of the injury, disease or death, was or was not “in the line of duty.”

2. Two Main Parts Of Investigation. There will be two aspects to your investigation: one, is to determine whether the soldier was in a proper duty status at the time of the incident/disease (defined by AR 600-8-4, paragraph 2-2(e)); and if so, then second, to determine whether the injury/disease or death was caused by the soldier's “willful negligence” or “intentional misconduct.” These phrases are defined for you in AR 600-8-4, Glossary Section II.

3. Finding. At the end of your investigation you will complete DD Form 261. On the DD Form 261 you will determine what category the soldier falls into one of the following:

a. In Line Of Duty. This category means the soldier was in a proper status and the incident was not caused by the soldier's willful negligence or intentional misconduct;

b. Not In Line Of Duty – Not Due To Own Misconduct. This category means that even though the incident was *not* due to the soldier's willful negligence or intentional misconduct, the soldier was not in a status that qualifies for in line of duty.

c. Not in Line of Duty-Due to Own Misconduct. This category means that the incident was a result of the soldier's willful negligence or intentional misconduct. The status of the soldier is irrelevant. In other words, if the soldier's willful negligence or intentional misconduct caused the incident, the determination must be Not in Line of Duty-Due to Own Misconduct regardless of the soldier's duty status.

4. Standard Of Proof. The standard you must use to determine relevant facts and to make your findings is a preponderance standard. This standard means that the evidence supports the fact or finding more than a contrary conclusion.

5. Investigation.

a. Start your investigation by calling the JAG Office at (307) 772-5254. The JAG Office will provide you with a binder that contains the appointment letter, AR 600-8-4, an Investigator's Guide, sworn statements, Privacy Act statements, DA Form 3881 (Rights Warning Form) and related documents.

b. Chronology. Begin a Chronology immediately upon receiving your appointment letter. A chronology is simply a list of actions you take and the time and date you took those actions (e.g. received appointment letter & JAG binder 7 August 2006 at 0800 hours).

c. Collect the DA Form 2173, if it is not included in the binder from JAG.

d. Make a list of all witnesses you want to interview and the order of interview. Think whether you will need to read any witness their rights (see paragraph 7 below);

e. Make a list of all evidence you want to collect/observe;

f. Make a schedule (call witnesses and set-up interviews);

g. Write out the tentative questions you want to ask each witness. Make sub-headings that cover each important area, ensure your questions under each sub-heading completely develop the particular issue. Keep all questions relevant. Ask hard questions, get to the point, ensure you get to the bottom of the truth.

h. As the witness is answering your questions, listen carefully to their answers and write a brief note next or under the question, summarizing their answer.

i. Think about any follow-up questions you may need to ask. Write it out quickly on your sheet, ask the question and summarize the answer as above.

j. After questioning, ask the witness to write-out a statement on DA Form 2823, placing in their own words everything that was just discussed;

k. Before the witness swears to and signs the statement, review it. Compare the written statement with your questions and notes. Ask the witness to add, at the bottom, any areas that he/she failed to discuss in the written statement. You may simply write out your question on the sworn statement and have the witness write their answer below. If there is a substantive difference between the written statement and what was discussed, ask the witness to explain and/or expound.

l. Swear the witness to the written statement.

m. Maintain your notes concerning the interviews.

n. Prepare your report in accordance with AR 600-8-4. Make a chronological list of relevant facts, then make your finding and fill out the DD Form 261.

o. If you have tentatively decided that the incident was not in the line of duty, you must notify the soldier in writing of your proposed finding with a copy of the report and supporting evidence (ensure you redact social security numbers from statements prior to releasing them). Inform the soldier he/she has an opportunity to respond in writing, give the soldier adequate time to do so (usually 15 days minimum) and send the correspondence via certified mail. After receiving a response from the soldier and considering it, or after the time of response has expired with no response, finalize your report.

o. Obtain a legal review from JAG.

p. After the legal review, ensure the report goes to the appointing authority and then to the Adjutant General for final approval.

6. Privacy Act Statement. Prior to interviewing the soldier who was injured, ensure you give the soldier a Privacy Act statement that has the following phrase: **You are not required to make any statement that would be against your interest as to anything relating to the origin, incurrence or aggravation of any injury you may have suffered.** Every other witness you interview who provides you with substantive information must also receive a Privacy Act statement, but it should not have the statement referenced above. The JAG Office will provide Privacy Act statements in your binder. Simply hand the statement to the witnesses. Attach to your report a copy of the Privacy Act statements you used and list the names of the individuals who received the statements during your investigation.

7. Article 31(b) Rights. Article 31(b) rights apply when you suspect a military member has committed a crime or violation of the UCMJ. The key to success in this area is to read the rights BEFORE you ask ANY questions if you suspect the individual committed a crime. A rights warning certificate (DA Form 3881) should be used to advise the person of their rights. The instructions on how to use the form are on the back of the form. In the section that advises the individual what he/she is suspected of, ensure you are as specific as possible (e.g. drunk driving on 7 AUG 06, violation of Article 92 UCMJ). If the individual wishes to invoke his/her rights, the interview must be terminated immediately.

8. Conclusion. Stay organized and spend a lot of time making sure your report is logical, supported by the evidence and answers the appropriate issues. Lastly, spend the appropriate time and effort to write the report well. Your report is only as good as it is written. If you are a poor writer, this is a good opportunity to develop your skill. It will pay off tenfold. Please contact the JAG office with any questions at (772-5254/5027).